

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTINE M. BARNWELL,	:	
	:	
Plaintiff,	:	
	:	22-cv-6219 (VSB)
-against-	:	
	:	<u>ORDER</u>
TARGET CORP. and JANE DOE,	:	
	:	
Defendants.	:	
-----X	:	

VERNON S. BRODERICK, United States District Judge:

Plaintiff filed this action on March 8, 2022, (Doc. 1-1), which was removed from state court on July 22, 2022 and assigned to Judge Buchwald, (Doc. 1). On September 20, 2022, the parties filed a joint status letter with the Court indicating that early resolution talks were unsuccessful and Plaintiff's counsel, John Tait, intended to file a motion to withdraw. (Doc. 7.) Mr. Tait filed his motion to withdraw on September 26, 2022. (Doc. 10.) On October 7, 2022 Judge Buchwald granted Mr. Tait's motion to withdraw and entered a stay for 30 days to allow Plaintiff to find substitute counsel. (Doc. 11.) The case was reassigned to me on October 13, 2022, and on November 10, 2022, following the end of the stay, I ordered Plaintiff to file a letter on the docket indicating whether she intends to proceed *pro se* and kept the stay in place until November 28, 2022. (Doc. 12.) To ensure that Plaintiff received my order, I directed Mr. Tait to send a copy to Plaintiff.¹ (*Id.*) On November 30, 2022, I ordered Mr. Tait to provide confirmation by December 5, 2022 that he sent my November 10 Order to Plaintiff and extended the stay in this action until December 9, 2022. (Doc. 13.) I warned that "[i]f Plaintiff did in fact receive, but failed to comply with, my November 10, 2022 Order, I may dismiss this case for


¹ All orders directing Mr. Tait to take action in this case were emailed to him via my chambers following his termination as counsel on ECF in this action.

failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (*Id.*) Having received no confirmation from Mr. Tait or indication from Plaintiff that she intends to proceed in this action, I issued an order on December 19, 2022 requiring Mr. Tait to provide the previously requested confirmation by December 22, 2022. (Doc. 14.) Again, I warned, “[i]f Plaintiff did in fact receive, but failed to comply with, my November 10, 2022 order, I will dismiss this case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (*Id.*) On December 19, 2022, Mr. Tait filed an affirmation stating that, on the days they were issued, he emailed Plaintiff a copy of the October 7, 2022 order granting his motion to withdraw as Plaintiff’s counsel and a copy of my November 10, 2022 order. (Doc. 15.) On November 11, 2022, Plaintiff sent an email stating “Got it!” as a reply to Mr. Tait’s October 7, 2022 email. (*Id.*) Plaintiff’s reply was sent just one day after Mr. Tait’s email regarding my November 10, 2022 order and could presumably have been made in response to her receipt of Mr. Tait’s November 10, 2022 email. However, even assuming Plaintiff never saw my November 10 Order and was responding to the October 7 Motion to Withdraw, Plaintiff was at the very least aware that she no longer had counsel and would need to take additional steps to continue to litigation this case. In addition, her response confirms that the email address Mr. Tait used is in fact Plaintiff’s correct email address and there is nothing to suggest that she did not receive my subsequent orders. To date, Plaintiff has not indicated that she intends to proceed *pro se* and no notice of appearance has been filed on Plaintiff’s behalf.

Accordingly, Plaintiff’s claims are dismissed without prejudice pursuant to Rule 41(b). The Clerk of Court is respectfully directed to terminate this action.

SO ORDERED.

Dated: December 21, 2022
New York, New York



VERNON S. BRODERICK
United States District Judge